

(c) *Non-discrimination.* All participants will have such rights as are available under any applicable Federal, State or local law prohibiting discrimination on the basis of race, sex, national origin, religion, age or handicapping condition. Individuals alleging discrimination may choose to have their complaints processed as a JOBS program dispute pursuant to §250.36, as a violation of other applicable State and local laws prohibiting discrimination, or as a violation of 45 CFR parts 80, 84 and 91.

#### **§251.2 Workers' compensation and tort claims protections.**

(a) Each participant covered by a workers' compensation statute or system shall be assured of workers' compensation including medical, accident and income maintenance insurance at the same level and to the same extent as that available to others who are similarly employed.

(b) Those participants in work assignments such as work supplementation and CWEP not covered by an applicable workers' compensation statute shall be provided with medical and accident protection for on-site injury at the same level and to the same extent as that required under the applicable State's workers' compensation statute for covered employment. Income maintenance coverage is not required for these participants.

(c) For the purpose of this section, medical insurance means that the employer must provide for the participant's medical care due to injury arising from, and in the course of, the participant's activity; accident insurance means tort claims protection; and income maintenance insurance means the monetary workers' compensation allowance.

#### **§251.3 Displacement.**

The State agency shall assure that CWEP, other work experience, on-the-job training (OJT), and work supplementation assignments:

(a) Shall not result in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in

hours of non-overtime work, wages, or employment benefits;

(b) Shall not impair existing contracts for services or collective bargaining agreements;

(c) Shall not result in the employment or assignment of a participant or the filling of a position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created by hiring a participant whose wages are subsidized under this program;

(d) Shall not infringe in any way upon promotional opportunities of any currently employed individual; and

(e) Shall not result in the filling of any established unfilled position vacancy by a participant assigned under §250.62 (work supplementation program) or §250.63 (CWEP) of the JOBS program.

#### **§251.4 Grievances by regular employees.**

(a) The State shall establish and maintain a grievance procedure for resolving complaints by regular employees or their representatives that the work assignment of an individual violates any of the prohibitions described in §251.3.

(b) Such grievance procedure shall include an opportunity for informal resolution.

(c) If no informal resolution can be reached within the specified time period as established by the State as part of its grievance procedure, the dissatisfied party may file a request for a hearing with the State.

(d) The State's hearing portion of the grievance procedure shall provide the following: A written notice of the date, time and place of the hearing; a hearing on the record; an opportunity to present evidence, bring witnesses, cross-examine witnesses; representation by counsel; and a written decision.

(e) The State's grievance procedure, pursuant to the provisions in paragraphs (b), (c), and (d) of this section, shall not exceed 90 days from the date of the complaint, by which time the

complainant shall be provided the written decision by the State.

(f) A decision of the State under paragraph (e) of this section may be appealed by any dissatisfied party within 20 days of the receipt of the State's written decision. The appeal shall be sent to the Office of Administrative Law Judges, U.S. Department of Labor, Vanguard Building, room 600, 1111 20th Street, NW., Washington, DC 20036. The review shall be on the record of the State proceedings, as supplemented pursuant to paragraph (j) of this section.

(g) The appeal shall contain:

(1) The full name, address and telephone number of the appellant;

(2) The provisions of the Social Security Act or regulations believed to have been violated;

(3) A copy of the original complaint filed with the State; and

(4) A copy of the State's findings and decision regarding the appellant's complaint.

(h) The appellant under paragraph (f) of this section shall send copies of the appeal, and any brief in support thereof, to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 and to the Assistant Secretary for Family Support, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

(i) Upon receipt of an appeal pursuant to paragraph (f) of this section, the Office of Administrative Law Judges shall request from the State agency, and the State shall, within 30 days of such request, certify and file with the Office of Administrative Law Judges the entire administrative record of the matter under appeal. The State shall send copies of this record to the Assistant Secretary for Employment and Training and the Assistant Secretary for Family Support at the addresses set forth in paragraph (g) of this section.

(j) Upon receipt of the copy of the appeal and the copy of the record pursuant to paragraphs (g) and (i) of this section, the Assistant Secretary for Employment and Training shall investigate, as appropriate, and, through the Office of the Solicitor of Labor, file, if

deemed appropriate, a brief or report with the Office of Administrative Law Judges for that office's consideration pursuant to paragraph (f) of this section. The State agency and the Assistant Secretary for Family Support may also file a brief or report with the Office of Administrative Law Judges.

(k) The decision of the Office of Administrative Law Judges under paragraph (f) of this section shall contain conclusions of law and findings of fact (the State's findings being conclusive if supported by substantial evidence) and, as exclusive remedies for complaining employee(s), where appropriate, reinstatement, back pay, and back benefits. The decision may also provide for remand to the State for further proceedings. The decision of the Office of Administrative Law Judges is the final decision of the Secretary of Labor on the appeal and shall be transmitted to the parties to the appeal, the State agency and to the Assistant Secretary for Family Support, Department of Health and Human Services, for appropriate action.

**§251.5 Complaints with respect to on-the-job working conditions, workers' compensation coverage and CWEP wage rates.**

(a) The State shall establish and maintain a grievance procedure under the State agency's fair hearing process (see §250.36) for resolving complaints by or on behalf of individuals participating in any work-related programs and activities under this part, including on-the-job training, work supplementation and community work experience programs, and other work-related activities authorized by the Secretary:

(1) With respect to on-the-job working conditions;

(2) With respect to workers' compensation coverage; and

(3) With respect to wage rates used in calculating the hours of participation required of individuals in community work experience programs described in §250.63 of the JOBS program.

(b) A decision of the State under paragraph (a) of this section may be appealed by any dissatisfied party within 20 days of the receipt of the State's written decision. The appeal